DEPARTMENT 85 LAW AND MOTION RULINGS

Case Number: 19STCP03648 **Hearing Date:** March 11, 2021 **Dept:** 85

David Abrams v. Regents of the

University of California,

19STCP03648

Tentative decision on petition for writ of mandate: denied

Petitioner David Abrams ("Abrams") seeks a writ of mandate directing Respondent Regents of the University of California ("Regents") to comply with Abrams' California Public Records Act ("CPRA") request to disclose the names of the individuals who spoke in November 2018 at a Students for Justice in Palestine ("SJP") conference (the "Conference") at University of California, Los Angeles ("UCLA").

The court has read and considered the moving papers, oppositions, and reply, and renders the following tentative decision.

A. Statement of the Case

1. Petition

Petitioner/Plaintiff Abrams, acting *pro se*,[1] filed this lawsuit on August 22, 2019, asserting a mandamus/declaratory relief cause of action for violation of the California Constitution and the California Public Records Act ("CPRA") and seeking injunctive relief. The Petition/Complaint alleges in pertinent part as follows.

In 2018, news came out that UCLA would be hosting a conference for SJP, a group known to have supported, hosted, or otherwise associated with terrorists. UCLA has received grants from the USAID program and must certify to the Department of State that it does not provide material support to anyone associated with terrorism.

On November 5, 2018, Abrams sent a letter to UCLA advising that hosting the SJP conference may jeopardize its eligibility for United States Agency for International Development ("USAID") grants. UCLA advised Abrams that it complied with such requirements because it had checked all 65 conference presenters to make sure they were not on the Treasury Department blocked person.

Abrams subsequently served a freedom of information request on the University seeking, *inter alia*, documents disclosing the names of the persons who spoke at the SJP conference. UCLA refused to supply this information, citing a fear of "harassment" and "endangerment" and "internet blacklists" on web sites such as canarymission.org.

UCLA's asserted public interest in non-disclosure is outweighed by Abrams' constitutional right to the information under California Constitution, Art. I ("Art. I"), section 3(b)(1). The public has an interest in these documents because it has a right to investigate whether UCLA is meeting its legal and contractual obligations to refrain from supporting terrorists. Further, the public has a right to the open debate promised by UCLA through learning the identities of persons presenting at conferences on school grounds. These public interests are not clearly outweighed by UCLA's speculation about harassment and blacklisting.

2. Complaint in Intervention

Intervenors filed their Complaint in Intervention on September 11, 2020. The Complaint alleges in pertinent part as follows.

Intervenors are individuals who attended and served as keynote speakers, panelists, and/or workshop presenters at the Conference. Many of them have experienced harassment and fear career and academic ramifications for their advocacy of Palestinian rights.

Harassment of individuals advocating for Palestinian rights have been common occurrences. Participants, presenters, and organizers of the Conference faced similar threats and harassment while preparing for and organizing the Conference. The Conference was neither endorsed nor sponsored by UCLA, which allowed the Conference to proceed as required by university policy.

The Conference was open only to participants who were either invited to speak or who registered for the event and received a registration confirmation. The registration process included confirmation by Conference organizers after verification by a pre-determined campus Palestine solidarity group. The Conference organizers made the decision to hold the Conference as a closed-door event due to the long history of harassment, threats, and doxing participants and presenters at such conferences face because of their opinions and affiliations supporting Palestinian rights.

Intervenors, who presented at the Conference, registered through separate attendee and presenter forms as part of the organizers' efforts to ensure the safety and security of the event as well as maintain the confidentiality of attendees and presenters. Organizers implemented other policies to verify attendees to minimize the risk of disclosure of names.

Disclosure of the information Abrams seeks would violate Intervenors' rights under the First Amendment and their privacy rights under the California Constitution. Intervenors' privacy rights outweigh any countervailing interest Abrams has in obtaining the information he seeks.

3. Course of Proceedings

On October 10, 2019, the Regents filed an Answer to the Petition. On January 7, 2020, the court granted in part the Regents' motion to strike the Petition as to specified irrelevant portions and denied the motion as to the rest.

On August 20, 2020, the court denied Abrams' order for a protective order and mostly denied his motion to compel further responses to interrogatories. The court granted in part Regent's motion to compel further responses to interrogatories and denied its motion to compel further responses to requests for production.

On September 11, 2020, the court granted the motion of Proposed Intervenors Does 1-8 for leave to file a complaint-in-intervention.

B. CPRA

1. Records Requests

The CPRA was enacted in 1968 to safeguard the accountability of government to the public. San Gabriel Tribune v. Superior Court, (1983) 143 Cal.App.3d 762, 771-72. Government Code section 6250 declares that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." The CPRA's purpose is to increase freedom of information by giving the public access to information in the possession of public agencies. CBS. Inc. v. Block, (1986) 42 Cal.3d 646, 651. The CPRA was intended to safeguard the accountability of government to the public, and it makes public access to governmental records a fundamental right of citizenship. Wilson v. Superior Court, (1996) 51 Cal.App.4th 1136, 1141. This requires maximum disclosure of the conduct of government operations. California State University Fresno Assn., Inc. v. Superior Court ("California State University"), (2001) 90 Cal.App.4th 810, 823.

The CPRA makes clear that "every person" has a right to inspect any public record. Govt. Code[2] §6253(a). The term "public record" is broadly defined to include "any writing containing information relating to the conduct of the people's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics. §6252(e). The inspection may be for any purpose; the requester's motivation is irrelevant. §6257.5.

The right to inspect is subject to certain exemptions, which are narrowly construed. California State University, *supra*, 90 Cal.App.4th at 831. The exemptions are found in sections 6254 and 6255 and include personnel information, deliberative process, private information and others.

Upon receiving a request for a copy of public records, an agency has to determine within ten days whether the request seeks public records in the possession of the agency that are subject to disclosure, but that deadline may be extended up to 14 days for "unusual circumstances." §6253(c). If the agency determines that the requested records are not subject to disclosure, the agency promptly must notify the person making the request and provide the reasons for its determination. Ibid.

If the agency determines that the requested records are subject to disclosure, it must state in the determination "the estimated date and time when the records will be made available." Ibid. There is no deadline expressed in a number of days for actually producing the records. Rather, section 6253(b) says the agency "shall make the records promptly available." Further, section 6253(d) provides that nothing in the CPRA "shall be construed to permit an agency to delay or obstruct the inspection or copying of public records."

"Records requests . . . inevitably impose some burden on government agencies. An agency is obliged to comply so long as the record can be located with reasonable effort." California First Amendment Coalition v. Superior Court, ("California First Amendment") (1998) 67 Cal.App.4th 159, 165-66. "Reasonable efforts do not require that agencies undertake extraordinarily extensive or intrusive searches, however. [Citation.] In general, the scope of an agency's search for public records 'need only be reasonably calculated to locate responsive documents.'" City of San Jose v. Superior Court, (2017) 2 Cal.5th 608, 627. The "CPRA does not prescribe specific methods of searching for those documents. Agencies may develop their own internal policies for conducting searches. Some general principles have emerged, however. Once an agency receives a CPRA request, it must 'communicate the scope of the information requested to the custodians of its records,' although it need not use the precise language of the request. [Citation.]." Ibid.

A CPRA claim to compliance with a public records request may proceed through mandamus or declaratory relief. §§6258, 6259. A petition for traditional mandamus is appropriate in actions "to compel the performance

of an act which the law specially enjoins as a duty resulting from an office, trust, or station." CCP §1085. Because the petitioner may proceed through either mandamus or declaratory relief, the trial court independently decides whether disclosure is required. *See* City of San Jose v. Superior Court, ("City of San Jose") (1999) 74 Cal.App.4th 1008, 1018 (appellate court independently reviews trial court CPRA decision). No administrative record is required, and the parties must submit admissible evidence.

2. Section 6254(f)

Section 6254(f) exempts from disclosure "[r]ecords of… investigations conducted by any state or local police agency….[and] investigatory …files complied by any…local agency for correctional, law enforcement, or licensing purposes…." This provision protects both records of investigation and investigatory files. Williams v. Superior Court, ("Williams") (1993) 5 Cal.4th 337, 341. The exemption protects witnesses, victims, and investigators, secures evidence and investigative techniques, encourages candor, recognizes the rawness and sensitivity of information in criminal investigations, and effectively makes such investigations possible. Dixon v. Superior Court, (2009) 170 Cal.App.4th 1271, 1276 (coroner and autopsy reports in investigative file are exempt).[3]

a. Investigatory Files

The exemption for investigatory files serves an important purpose and is broad in nature. Williams v. Superior Court, ("Williams") (1993) 5 Cal.4th 337, 349,356. Although a document does not on its face purport to be an investigatory record, it may have extraordinary significance to the investigation warranting exemption. Id. Instead of adopting the federal Freedom of Information Act's ("FOIA") case-by-case approach with specific criteria to determine the exemption, the Legislature provided for the complete exemption of such files, with disclosure of information derived from the records. Id. at 350, 353 (criminal investigatory file of two deputy sheriffs).

Information in a file is investigatory material only when the prospect of enforcement proceedings becomes "concrete and definite". Williams, *supra*, 5 Cal.4th at 355 (citing Uribe v. Howie, ("Uribe") (1971) 19 Cal.App.3d 194). The investigatory file exemption does not terminate when the investigation ends; documents properly in the file remain exempt. Rackauckas v. Superior Court, ("Rackauckas") (2002) 104 Cal.App.4th 169, 174.

The California Supreme Court addressed the distinction between section 6254(f)'s investigatory file and records of investigation exemptions in Haynie v. Superior Court, ("Haynie") (2001) 26 Cal.4th 1061. Plaintiff Haynie, a black male, was stopped by LASD, handcuffed, and questioned without charges filed based on a citizen complaint. Id. Haynie filed a tort claim and separately sought and writings concerning the incident. Id. LASD invoked section 6254(f) and refused to comply. Id.

The Supreme Court noted that case law had held that section 6254(f)'s exemption for investigatory files applies only when the prospect of enforcement is concrete and definite. Once this is shown, and that a record was created for the purpose of investigation, Haynie rejected any requirement that the agency show a valid need to withhold records, such as evidence that the disclosure would endanger a witness or the investigation itself. Id. at 1071. Haynie cautioned that this does not mean that everything law enforcement does is shielded from disclosure. Officers have citizen contacts for purposes of crime prevention and public safety that are unrelated to either civil or criminal investigations, and records are exempt under section 6254(f)'s protection of records of investigation only for investigations taken for purposes of whether a violation of law has or may occur. Id. at 1071.

Not every file is an investigatory file for purposes of section 6254(k). The law does not provide[] that a public agency may shield a record from public disclosure, regardless of its nature, simply by placing it in a file

labeled 'investigatory.' Uribe *supra,* 19 Cal.App.3d at 212-13 (routine farmer reports of pesticide spraying were not investigatory files for licensing purposes). So, if a document in the investigatory file is publicly filed in a court, it is not exempt under section 6254(f). Weaver v. Superior Court, ("Weaver") (2014) 224 Cal. App. 4th 746, 751 ("Because they were publicly filed, the charging documents Weaver seeks are not investigatory files exempt from disclosure under the CPRA."). Furthermore, it is the nature of a document, and not where it is kept, that is the basis for whether it is exempt from disclosure under the investigatory file exemption. *See* Comm 'n on Peace Officer Standards & Training v. Superior Court, (2007) 42 Cal. 4th 278, 291 (analogizing personnel files to investigatory files and citing Williams, *supra*, 5 Ca1.4th at 355 for the proposition that 'the law does not provide... that a public agency may shield a record from public disclosure, regardless of its nature, simply by placing it in a file labelled "investigatory"'.)

In sum, a file is investigatory only if the prospect of law enforcement is "definite and concrete" and the record properly belongs in the file because it relates to the investigation. Copley Press, Inc. v. Superior Court, ("Copley") (2006) 39 Cal.4th 1272, 1293.

b. Records of Investigation

In contrast to investigatory files, the Haynie court concluded that the concrete and definite prospect of enforcement standard only applies to section 6254(f)'s exemption for investigatory files, and "records of investigation" are exempt on their face whether or not they are included in an investigatory file. 26 Cal.4th at 1068-69 (citing Uribe, *supra*, 19 Cal.App.3d at 213 *and* Williams, *supra*, 5 Cal.4th at 356). Any interpretation that limited records of investigations only to those where the likelihood of enforcement has ripened would expose the public to "the very sensitive investigative stages of determining whether a crime has been committed or who has committed it." Id. at 1070. Documents independently exempt -- Black Panther Party v. Kehoe, (1974) 42 Cal.App.3d 645, 654 (records of complaints) American Civil Liberties Union v. Deukmejian, (1982) 32 Cal.3d 440, 449 (intelligence information) – have been held not to be part of the concrete and definite investigatory file requirement, and no less is true for investigatory records. Id.

These records of investigation do not lose their exempt status based on the prospect of enforcement; law enforcement officers may not know whether a crime has been committed when they undertake an investigation, and the results may be inconclusive. For example, a fire may be suspicious but found to be accidental after investigation. Id. at 1070. Even reports from routine investigations such as the traffic stop involving Haynie are protected. Id. at 1070-71.

The California Supreme Court has emphasized Haynie's statement that **"**records of investigation exempted under section 6254(f) encompass only those investigations undertaken *for the purpose* of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted *for the purpose* of uncovering information surrounding the commission of the violation and its agency." American Civil Liberties Union Foundation of Southern California v. Superior Court, ("ACLU") (2017) 3 Cal.5th 1032, 1040. The ACLU court then held that LAPD's records from scanning license plates to look for stolen cars through automated license plate reader technology were not records of investigation because they were not part of targeted inquiry into particular crime. Id. at 1042.

3. Section 6254(k)

Section 6254(k) provides in relevant part: "[N]othing in this chapter shall be construed to require disclosure of records that are any of the following:...(k) [r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law...." This exemption "is not an independent exemption. It merely incorporates other prohibitions established by law. CBS, Inc. v. Block, ("CBS") (1986) 42 Cal.3d 646, 656. "In 1998, the Legislature added an article to the PRA specifically 'list[ing] and describ[ing]' over 500 statutes that provide

disclosure exemptions through Government Code section 6254, subdivision (k). (Gov. Code § 6275; *see also id*. §§ 6276–6276.48.)" Copley, *supra,* 39 Cal.4th at 1283.

4. Section 6255(a)

"[T]he agency shall justify withholding any record by demonstrating that the record in question is exempt...or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." §6255(a).

Section 6255(a) is the CPRA's catch-all provision and "contemplates a case-by-case balancing process, with the burden of proof on the proponent of nondisclosure to demonstrate a clear overbalance on the side of confidentiality." Montanan *supra*, 38 Cal.4th at 1071. The court must balance the public interest in disclosure against the privacy interests, evaluating the weight of the public interest by the gravity of the public tasks sought to be illuminated and the directness with which the disclosure will illuminate those tasks. *See* Humane Society of the United States v. Superior Court, (2013) 214 Cal.App.4th 12133, 1267-68.

D. Statement of Facts[4]

1. Abrams' Evidence

Abrams' CPRA request asked UCLA to produce documents that disclose the identities of individuals who presented ("Presenters") at SJP's Conference. Abrams Decl., ¶2. The Conference was financially subsidized by UCLA by means of a $8,000 Bruin Excellence & Transformation ("BEST") grant made by UCLA's Office of the Vice Chancellor of Equity, Diversity and Inclusion ("Diversity Office"). Abrams Decl., ¶5, Ex. A, A-1, p.1. UCLA's Chancellor publicly defended the decision to host the Conference, citing a need for open debate. Abrams Decl., ¶6, Ex. B.

Due to his interest in researching the activities of anti-Israel terrorists, Abrams served his CPRA request on UCLA, asking for the names of the Presenters at the Conference. Abrams Decl., ¶8, Ex. C. UCLA denied his request. Abrams Decl., ¶9, Ex. D.

In the course of discovery, Abrams asked UCLA to produce information concerning its claim that speakers and organizers of previous SJP conferences have been targeted on internet blacklists such as canarymission.org and have become the objects of threats and harassment. Abrams Decl., ¶10. UCLA's responses reveal no evidence supporting its claim, nor any evidence of unlawful conduct by Canary Mission. Abrams Decl., ¶11. UCLA only identified individuals who faced consequences after making anti-Semitic statements on social media. Abrams Decl., ¶¶ 12-21, Exs. E-G.

Abrams does not work for Canary Mission, but he has reviewed its website to respond to UCLA's claims. Abrams Decl., ¶16. He identified only two persons who faced consequences as a result of publicity on the website: Dr. Lara Kollab, who lost her job after Canary Mission discovered that she said she would give the wrong medicine to Jewish patients and a pre-school teacher who lost her job after tweeting that not enough Jews died in the Holocaust. Abrams Decl., ¶¶ 17-18.

As a political activist, Abrams can say that there are a lot of insults, accusations (fair and unfair), and invective. Abrams Decl., ¶23.

2. Regents' Evidence[5]

On November 15, 2018, Abrams submitted his CPRA request seeking documents related to the Conference: (A) documents sufficient to identify the 65[6] keynote speakers, panelists, and workshop Presenters; (B) all contracts concerning the Conference; and (C) all e-mails and other correspondence to and from any SJP organization concerning the Conference. Baldridge Decl., ¶3, Ex. B.

On March 28 and May 31, 2019, UCLA responded to Abrams' request and produced numerous records in response to items B and C. Baltridge Decl., ¶4. On August 9, 2019, UCLA informed Abrams that the identities of the Presenters are exempt from release pursuant to the exemption in section 6255. Baltridge Decl., ¶5, Ex. B.

SJP is a student group registered with UCLA's Office of Student Organizations, Leadership, and Engagement ("SOLE"). DeLuca Decl., ¶4. On August 24, 2018, UCLA became aware of a social media post indicating that the Conference would be held at UCLA in November 2018. DeLuca Decl., ¶4. Immediately thereafter, the SOLE Advisor followed up with SJP about the social media posting. Id. SJP confirmed to its SOLE Advisor that it had been selected, and that it wanted, to sponsor and host the Conference with NSJP. Id.

The private Conference was held on the UCLA campus on November 16-18, 2018. DeLuca Decl., ¶5. The UCLA administration did not organize the Conference; it was organized and run by SJP. Id. The event was open to registered SJP members and it was not open to the public. Id. This is not unusual, as many student groups host private events on campus. Id. SJP organized the event, determined the agenda, selected the speakers and attendees, and made the decision on who would attend the Conference. Id. Details about who would present at the Conference, the schedule for the Conference, and the admission/registration process was determined entirely by NSJP/SJP. Id. SJP provided UCLA with the estimated number of attendees for planning purposes so that UCLA could address the safety of participants, plan for potential protesters, and work to ensure freedom of speech on both sides. Id.

UCLA did not provide any direct funding for the Conference and the Conference did not receive any student compulsory fees. DeLuca Decl., ¶6. Prior to the Conference, SJP applied for and received an academic year block grant from the BEST program. Id. UCLA's Diversity Office has for many years provided financial support in the form of block grants to BEST. Id. BEST fosters social justice leadership among campus activists by providing funding, mentorship, and coordination, as well as activist-oriented growth and development opportunities. Id. BEST is an entirely student-led initiative and its connection to the UCLA administration is that it receives funding to develop and support student projects. Id.

After the Conference was announced, several groups called on UCLA to cancel it. Ruiz Decl., ¶6; DeLuca Decl., ¶7. Some groups claimed that SJP and its affiliates were connected to terrorism, posed a potential threat, and that UCLA could lose federal funding if it allowed the Conference to proceed. Id. UCLA also received complaints about harassment and targeting of student advocates for Palestinian interests and of possible Conference presenters. DeLuca Decl., ¶7. The complaints expressed concern about defamatory statements published online and for physical safety. Id., Ex. A. An SJP representative advised UCLA that in past years its speakers' names and personal information had been posted on online blacklists like Canary Mission, subjecting them to harassment campaigns. DeLuca Decl., ¶8.[7]

To address the concerns of SJP and UCLA's Jewish student organizations, Michael DeLuca ("DeLuca"), Assistant Vice Chancellor, Campus Life, met with representatives of both. DeLuca Decl., ¶9. SJP agreed to provide DeLuca with the names of the Presenters for the purposes of security checks and threat assessment after DeLuca informed it that the names would be kept confidential and only used by UCLA's police department ("UCPD"). DeLuca Decl., ¶10, Ex. A, pp. 56-59. DeLuca shared the names only with UCPD and would not have asked for them if not for the need to conduct an investigation. Id. As such, DeLuca acted only as a conduit in obtaining and transferring the information to UCPD. Id.

Roland Ruiz ("Ruiz"), a UCPD sergeant who is a sworn peace officer and the Threat Management Sergeant for UCLA's Behavioral Intervention Team, conducted an investigation of the Presenters for ties to terrorism. Ruiz Decl., ¶¶ 6-10, Exs. A, D, pp. 1-17. Ruiz contacted the FBI, the Joint Regional Intelligence Center, and the Orange County Intelligence Assessment Center to obtain intelligence on the event, its

sponsors, the presenters, and any potential links to terrorism. Ruiz Decl., ¶13. Ruiz conducted open-source checks on NSJP and SJP, including checking each organization's social media accounts and websites. Ruiz Decl., ¶8. Ruiz checked the United Nations Security Council sanctions list, the Treasury Department's Specially Designated Nationals and Blocked Persons lists, and the State Department's Foreign Terrorist Organizations list to determine if any of the Presenters or the organizations with which they were associated had ties to terrorism. Ruiz Decl., ¶11. Ruiz further contacted past host campuses for SJP events and found that there were no disruptions or protest during the events. Ruiz Decl., ¶12.

Ruiz found that neither SJP nor its national parent NJSP were designated as a terrorist organization by the State Department and there was no intelligence indicating that any of the 64 Presenters engaged in terrorist activities or provided direct support to known terrorists. Ruiz Decl., ¶¶ 11, 13, Ex. A, p.13. Ruiz concluded that neither SJP, nor any of the Presenters, posed a threat to the campus or should be deemed terrorists. Ruiz Decl., ¶14.

UCLA complied with its obligations regarding Terrorist Financing under the 2018 USAID Certification. Id. The materials related to Ruiz's investigation are in UCPD files and are not available to the public. Ruiz Decl., ¶13. They are confidential and were created, and have been maintained, solely to support UCPD's criminal and investigatory functions. Id.

UCLA strives to protect individuals' rights to free speech, freedom of association, and academic freedom. Kang Decl., ¶7. As part of this effort, UCLA policies allow and encourage the formation of various student groups on campus. UCLA has a long history of respecting and valuing student self-organization and activism. Id. A disclosure of the Presenters' names is likely to have a materially adverse impact on UCLA's ability to advance its mission, which includes the sharing of even unpopular or controversial ideas, and the public will suffer as a result. Kang Decl., ¶8.

3. Intervenors' Evidence[8]

NSJP is an independent grassroots organization whose mission is to empower, unify, and support student organizers who push for Palestinian liberation and self-determination. Kahn Decl., ¶6. In 2018, NSJP held its annual conference at UCLA. Khan Decl., ¶9.

In May 2018, SJP's external affairs director -- and as of September 2018 its finance director -- learned that NSJP was looking for a student club on the West Coast to host the Conference. Thockchom Decl., ¶6. The external affairs director spent the next several months in conference planning. Thockchom Decl., ¶8. SJP had been allocated $8000 from BEST for events and expenses during 2018. Thockchom Decl., ¶8. The external affairs director applied for a portion of the grant to be designated for Conference costs, but SJP did not end up using any of the BEST funds. Thockchom Decl., ¶8. Instead, NJSP paid for the Conference and SJP did not pay any costs to UCLA. Thockchom Decl., ¶8.

As a campus organization, SJP could reserve certain classrooms and ballrooms for free. Thockchom Decl., ¶8. UCLA informed SJP that the event would have to be open to the UCLA community if the space were to be free. Thockchom Decl., ¶8. The Conference organizers did not want the event to be open and decided to rent the rooms. Thockchom Decl., ¶9. Some rooms were rented under NSJP's name and some under SJP's name, but NSJP ultimately paid for all of them. Thockchom Decl., ¶8.

Just over a week before the Conference, UCLA asked conference organizers for the names of the Presenters. Thockchom Decl., ¶10. The organizers were concerned about blacklisting websites like Canary Mission and so informed UCLA. Thockchom Decl., ¶10. The names were disclosed by SJP only after receiving assurances from UCLA that the Presenters' names would be kept confidential. Intv. Ex. 10B, pp. 16-19.

Canary Mission is an anonymous blacklisting website that contains thousands of dossiers on Palestinian rights advocates and falsely labels them racists, anti-Semites, and supporters of terrorism. Mullen

Decl., ¶7. Canary Mission promotes these posts on social media. Mullen Decl., ¶8. The purpose of the site is to "make sure that 'today's radicals don't become tomorrow's employees. Mullen Decl., ¶10. Targets of Canary Mission have been fired from their jobs, interrogated by employers and university administrators, and targeted with death threats and racist, homophobic, and misogynist harassment from Canary Mission followers. Mullen Decl., ¶11.

Advocates for Palestinian rights face various forms of harassment and other harms, including threats of violence and death (Marzec Decl., ¶¶ 8-15), difficulties entering Israel and Palestine (Mullen Decl., ¶11; Habeeb Decl., ¶¶ 9-10), and threats to their academic and career prospects. Mullen Decl., ¶¶ 22-23.

4. Reply Evidence

SJP's invoice from UCLA for the Conference does not contain any charges for space rental and appears strictly limited to services. Greendorfer Decl., ¶3, Ex. A. DeLuca stated in an email that the Conference was not viewed as a space rental. Greendorfer Decl., ¶4, Ex. B.[9]

E. Analysis

Petitioner Abrams seeks to compel Regents to release the name of the 64 Presenters who attended and participated in the Conference.[10] Regents and Intervenors separately oppose. Regents and Intervenors have the burden of proof (§6255), and the exemptions on which they rely must be narrowly construed. Caldecott v. Superior Court, (2015) 243 Cal.App.4th 212, 218.

1. Section 6254(f)

Regents argues that section 6254(f) exempts the documents containing the Presenters' names because they were provided to UCLA and UCPD for the purpose of conducting a threat/safety assessment related to the Conference and are part of UCPD's investigatory file for that assessment. Regents Opp. at 8.

Abrams replies that Regents' reliance on the investigative file exemption is an afterthought and the exemption does not apply because the records sought are not part of any investigative file. Reply at 5. UCLA simply forwarded copies of the records to UCPD and later decided the exemption applied. Reply at 5. The law does not permit a public agency to shield a record from public disclosure simply by placing it in a file labeled "investigatory." Williams v. Superior Court of San Bernardino County, (1993) 5 Cal.4th 337, 355. Reply at 5. Abrams also asserts that there was never any actual investigation because there was not an inquiry into actual crimes. Reply at 5-6. Finally, even if the exemption applies, section 6254(f) still requires the disclosure of the names and addresses of persons involved in the incident. Reply at 6.

Regents have established that they requested the Presenters' names solely for the purpose of conducing its threat assessment and investigation looking for potential ties to terrorism. DeLuca Decl., ¶10, Ex. A, pp. 56-59. SJP agreed to provide DeLuca with the names of the presenters for the purposes of security checks and threat assessment after DeLuca informed them the names would be kept confidential and only used by UCPD. DeLuca Decl., ¶10, Ex. A, pp. 56-59. DeLuca only shared the names with UCPD and would not have asked for them if not for the need to conduct an investigation. Id. As such, DeLuca acted only as a conduit in obtaining and transferring the information to UCPD. Id. DeLuca retained the list of names in his email storage, but he did so only by virtue of his role as a conduit. Id.

The result is that the Presenters' names were acquired by UCLA solely for an investigation into SJP and NSJP for terrorist ties. The fact that the names were touched by a UCLA official outside of UCPD is of no moment

because DeLuca clearly was acting as an agent for UCPD's investigation by acquiring the information. The list of names is part of an investigative file, and DeLuca's retention of the names in his email storage does not modify this conclusion. An investigative file can be located anywhere and can be parsed into more than one piece. The importance lies in the nature of the record, not where it is located.

The issue becomes whether UCPD's list of Presenters' names is part of an "investigative file" or "record of investigation" under section 6254(f). A record is part of an investigatory file only if the prospect of law enforcement is "definite and concrete" and the record properly belongs in the file because it relates to the investigation. Copley, *supra,* 39 Cal.4th 1272, 1293 (peace officer's disciplinary appeal was not investigative file).

Plainly, UCPD's background check of the Presenters is not an investigatory file; there was no prospect of criminal law enforcement. That was not the purpose of the threat investigation. Nor is the record part of a "record of investigation" exempted under section 6254(f) because such records encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. ACLU, *supra,* 3 Cal.5th at 1040. UCPD's background check was not undertaken to determine whether a crime had occurred or may occur.[11]

The record of the Presenters' names is not exempt from disclosure under section 6254(f) as part of UCPD's investigatory file or record of investigation.

2. Section 6255(a)

The CPRA's catchall provision states that "the agency shall justify withholding any record by demonstrating that...on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." §6255(a).

Abrams notes that UCLA relied on section 6255(a) to refuse his request to produce the Presenters' names, claiming that speakers and organizers of previous NSJP conferences have been targeted on internet blacklists such as canarymission.org and have become the objects of threats and harassment. Pet. Op. Br. at 3-4. Abrams asserts that the University's purported reason is insufficient to meet Regents' burden to demonstrate a public interest in withholding the record, especially when compared with the public interest in disclosure.

When it comes to disclosing a person's identity under the CPRA, the public interest which must be weighed is whether such disclosure "would contribute significantly to public understanding of government activities" and serve the legislative purpose of "shed[ding] light on an agency's performance of its statutory duties." City of San Jose, *supra,* 74 Cal.App.4th at 1018-19; Humane Society of U.S. v. Superior Court, (2013) 214 Cal.App.4th 1233, 1268. Courts have found that the public interest in disclosure of names and addresses of persons outweighs the public interest in non-disclosure for persons who obtained concealed weapon permits (CBS, *supra*, 42 Cal.3d at 656-57), for excessive water users (New York Times v. Superior Court, (1990) 218 Cal.App.3d 1579, 1585-86), and for the names of sheriff's deputies who fired weapons (New York Times v. Superior Court, (1997) 52 Cal.App.4th 97, 104. Courts have declined to release public records where the public interest in non-disclosure outweighs the public interest in disclosure for FBI rap sheets (U.S. Dept. of Justice v. Reporters Committee, (1989) 489 U.S. 749, 774-75), the governor's appointment schedule and calendars (Times Mirror v. Superior Court, (1991) 53 Cal.3d 1325, 1345-46), and applications for appointment to public office (Wilson v. Superior Court), (1996) 51 Cal.App.4th 1136, 1141). The issue may turn on whether disclosure of names and addresses is necessary to allow the public to determine whether public officials have properly exercised their duties. *See* City of San Jose, *supra,* 74 Cal.App.4th at 1020 (refusing to disclose identity of persons who complained about airport noise because the publicly available information permits the public to analyze the city's performance of its duty to record, investigate, and report noise complaints).

a. Public Interest in Non-Disclosure

Abrams argues that there is no public interest in the non-disclosure of the Presenters' names. He notes that Regents failed to identify a single individual who has been threatened or harassed as a result of speaking at a NSJP conference. Pet. Op. Br. at 4. Instead, Regents have identified a number of individuals who were publicly "called-out" after making anti-Semitic argument on social media, none of whom presented at an NSJP conference. Pet. Op. Br. at 4-5, 8-9; Reply at 7-9. Regents also fail to offer any evidence that Canary Mission's actions in blacklisting individuals are improper or illegal. Pet. Op. Br. at 5.

Abrams challenges the declarations[12] provided by Intervenors, asserting that they are exaggerated, self-serving, and hearsay. Pet. Op. Br. at 5, 7, 9-10; Reply at 7. None of the declarations append copies of police reports, records of restraining orders, or any kind of independent proof of the claims asserted. The declarations signed by Megan Marzec ("Marzec") and Bill Mullen ("Mullen") are irrelevant. Reply at 8.

Marzec admits that she posted a video of herself online pouring fake blood on herself and that she did so in order to "spark conversations", which is a charitable way of saying that she was attempting to provoke a reaction. *See* Marzec Decl., ¶¶ 7-8. The firestorm allegedly experienced by Marzec is irrelevant to the issue whether anyone will be endangered by simply having their name revealed as having presented at the Conference. Marzec is obviously an activist who deliberately courts controversy and her experiences are not predictive of the experiences of someone who simply has their name released solely as a conference presenter. Reply at 8.

Similarly, Mullen is a self-described "revolutionary socialist" who states that he is "inspire[d]" by "radical resistance." Mullen is also caught up with Antifa as well as the "Occupy Wall Street" movements. Mullen has a right to be a public and controversial figure, but his sexual harassment allegations are irrelevant to the question of whether the mere release of someone's name as a conference presenter poses a danger. Reply at 8-9. The same reasoning applies to Intervenors' claims about entry to Israel. Reply at 10.

Abrams adds that, even if the declarations are true, they demonstrate that the Presenters face lawful public criticism rather than unlawful threats and harassment. Pet. Op. Br. at 5-6. Abrams contends that the lack of documentary evidence demonstrating a credible threat of unlawful threats and harassment, as opposed to lawful public criticism, demonstrates there is little public interest in preventing disclosure of the Presenters' names. Pet. Op. Br. at 10; Reply at 8-9, 11-12.

Abrams concludes that Regents and Intervenors have not met their burden to clearly demonstrate that there is a danger to the Presenters simply for being revealed as having presented at an anti-Israel conference with no disclosure of the substance of their presentation. The Conference organizer, Thockchom, admits that he has been profiled on Canary Mission as an organizer of the Conference since 2018, but he does not complain of any threats, harassment, or other adverse consequences. Reply at 1.

Intervenors' evidence must be separated into criticism of their political position and risk of violence or harassment and the court agrees with Abrams about the risk of violence. Intervenors' redacted declarations have not been considered on substantive issues, and the Marzec and Mullen declarations do not support a conclusion that the Presenters are at risk of violence if their names are disclosed. Public activists such as Mullens and Marzec have inserted themselves into the public dialogue and must expect criticism as part of what they do; the fact that a website will criticize them or seek to prevent them from retaining their job because they are extremists is part of the fabric of discourse. Thockchom, whose name has been on Canary Mission for organizing the Conference, does not reveal any threats or harassment against him. Finally, to the extent it is admissible, Intervenors' evidence of potential violence is self-serving and speculative. Mere speculation about possible endangerment is not enough to overcome the public interest in disclosure. CBS, *supra,* 42 Cal.3d at 646. Abrams is correct that the evidence only shows that persons opposed to Intervenors'

view have exercised their First Amendment right to criticize and disagree, sometimes vulgarly. Pet. Op. Br. at 2-3, 10.

On the other hand, the Presenters are not public figures and have not put themselves in the public dialogue. A probability of harm can be shown by proffering evidence of past or present harassment of members due to their associational ties or of harassment directed against the organization itself. Buckley v. Valeo, (1976) 424 U.S. 1, 74. Declarations from individuals with experience in the matter may suffice. Los Angeles Unified School Dist. v. Superior Court, (2014) 228 Cal.App.4th 222, 244. There is a public interest in non-disclosure of the Presenters' names to protect their privacy and avoid a chilling effect from their speech. City of San Jose, *supra,* 74 Cal.App.4th at 1023.

Both Regents and Intervenors demonstrate that there is a risk of blacklisting and harassment if the names are disclosed. Before the Conference, UCLA knew of online statements urging others to stand up for vulnerable Jews and pro-Israel advocates. Ruiz Decl., ¶6; DeLuca Decl., ¶7, Ex. A, p.4. Intervenors present evidence of harassment, job difficulties, and problems entering Israel emanating generally from pro-Palestinian activism. Makdisi Decl., ¶¶ 4-11; Mullen Decl., ¶10: habeeb Decl., ¶¶ 9-14; Amad Decl., ¶¶ 12-14. These criticisms and harassing efforts may not be unlawful, but that fact is not dispositive. A substantial privacy interest exists if disclosure would likely lead to embarrassment, retaliation, or harassment. Forest Serv. Employees for Envtl. Ethics v. U.S. Forest Serv., (9th Cir. 2008) 524 F.3d 1021, 1026. Abrams' reliance on CBS is misplaced because Regents and Intervenors have shown that the Presenters may well face some form of harassment as a result of the disclosure of their names.

There is a public interest in the non-disclosure of the Presenters' names to avoid harassment.[13]

b. Public Interest in Disclosure

Regents points out that the Conference was a controversial student organization-led event that was not organized or run by UCLA. UCLA had nothing to do with the event organization, agenda, or selection of speakers and attendees. Reg. Opp. at 2-3. UCLA did not provide any direct funding to the Conference or receive any student compulsory fees. Id. UCLA does provide block grants to the BEST program, which is a student-led initiative. UCLA permitted the Conference to take place as a matter of free speech, noting beforehand that "[m]uch of what will be said at that conference may be deeply objectionable – even personally hurtful.[.]" Abrams Decl., Ex. B.

Intervenors present evidence that SJP did not use any UCLA funds for the Conference, even the $8000 BEST grant. As a campus organization, SJP could reserve certain classrooms and ballrooms for free. Thockchom Decl., ¶8. When UCLA informed SJP that the event would have to be open to the UCLA community if the space were to be free, Conference organizers decided to rent the rooms so that the Conference would be private. Thockchom Decl., ¶9. Some rooms were rented under NSJP's name and some under SJP's name, but NSJP ultimately paid for all of them. Thockchom Decl., ¶8.

Abrams disputes Intervenors' conclusion that no UCLA funds were used for the Conference. The organizer admitted that SJP intended to pay rent for the rooms rather than have them open to the public. Thockchom Decl., ¶9. The invoice from the Conference shows that there was no charge applied for any space. *See* Greendorfer Decl., ¶3, Ex. A. UCLA's DeLuca testified that SJP did not pay a facility use fee. Abrams Decl., Ex. A, p. 37. The documentary evidence confirms that UCLA subsidized the Conference by means of the BEST grant. More specifically, Exhibit A-1 to the Abrams declaration states unequivocally that the Conference had been funded in part through the BEST grant.[14] Regents have carefully avoided stating that the Conference was not subsidized through the BEST grant, stating that "the University did not provide any direct funding to the conference...." Reg. Opp. at 3 (emphasis added). Moreover, Thockchom only stated: "To my knowledge, NSJP paid the expenses for the conference directly." Thockchom Decl., ¶8.

Neither Regents nor the Intervenors have produced receipts, cancelled checks, or any other reliable documentary evidence refuting the contents of Exhibit A-1. Under these circumstances, Abrams concludes that the only reasonable inference is that UCLA subsidized the Conference through free room space and the BEST grant. *See* Williamson v. Superior Court, (1978) 21 Cal. 3d 829, 840 n. 2 (where defendant fails to produce evidence that would naturally have been in his possession, the trier-of-fact may infer that the evidence would have been adverse. Reply at 3-5.

Abrams' Exhibit A-1 shows that SJP applied to UCLA's Events Office to hold the Conference, stating that it has outside fundraising and the BEST grant. On September 1, 2018, UCLA's Office of Equity, Diversity and Inclusion provided SJP with an $8000 BEST grant, which would be administered on SJP's behalf by SOLE. Ex. A-1. The Conference invoice to SJP supplied by Abrams (Grenendorfer Decl., Ex. A) provides $3,929.52 in charges for the Conference, mostly for audio-visual, facilities, and janitorial services. Ex. A-1. There is no entry for room rent.

These exhibits do not necessarily contradict Intervenors' evidence that some rooms were rented under NSJP's name and some under SJP's name, but NSJP ultimately paid for all of them. Thockchom Decl., ¶8. Nor do they necessarily contradict Thockchom's statement that SJP did not use any of the BEST funds for the Conference because NSJP paid for it. Thockchom Decl., ¶8. Nonetheless, the court agrees with Abrams that Intervenors' evidence on this subject is weak. Either Regents or Intervenors, or both, should have been able to provide documentary evidence showing that no portion of the BEST grant was used and that NSJP paid for everything, including room rental.

Therefore, the court will assume that UCLA to some extent subsidized the student-run Conference through a room rent subsidy or otherwise. Nonetheless, SJP's use of UCLA facilities to host an event neither constitutes nor implies UCLA's endorsement of the Conference, the speakers. or the views expressed. This fact remains true for a partly subsidized student event.

Abrams asserts three public interests for disclosure of the Presenters' names: (1) permitting citizens to investigate whether UCLA is hosting terrorists or other criminals on campus; (2) allowing the public to learn how UCLA is spending public monies; and (3) permitting the public to respond to free speech with more free speech. Pet. Op. Br. at 7.

With respect to the public interest in not hosting terrorists on campus, Abrams asserts that NSJP has previously hosted speakers affiliated with terrorist organizations and that there is a public interest in whether UCLA's public and USAID funding is being used improperly.[15] Pet. Op. Br. at 3; Reply at 3-4.

As a USAID recipient, UCLA must certify that it will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts or has committed, attempted to commit, facilitated, or participated in terrorist acts. Reg. Opp. Ex. D.

As Regents argue, there is no public interest in whether UCLA is improperly spending USAID funding because UCLA complied with its USAID obligations by conducting a thorough threat assessment by having UCPD review SJP, NSJP, and the Presenters to determine if they had any ties to terrorism. Ruiz Decl. ¶¶ 6-10; Ex. A, pp. 1-17. Abrams has pointed to no shortcomings in this threat assessment investigation which would justify disclosure of the Presenters' names so that Abrams or someone else can investigate further their terrorist ties. Regents also note that the identity of persons investigated under USAID requirements is exempt from disclosure under FOIA pursuant to the U.S. Department of State's coordinated Partner Vetting System pilot program, which is intended to help mitigate the risk that USAID funds and other resources could inadvertently benefit individuals or entities that are terrorists, supporters of terrorists or affiliated with terrorists. 22 CFR §215.13(c)(2). Regents argue that the Presenters' identities should be protected under the CPRA for the same reason. Reg. Opp. at 13. Abrams proffers no reason why this same protection should not apply to UCLA's investigative efforts.

With respect to the public interest in knowing how UCLA is spending public monies, Regents correctly note UCLA has provided this information to Abrams. Abrams Decl., Ex. A-1. Regents argue that Abrams has been provided all records (except for those identifying the Presenters) relating to the Conference as requested in items 2 and 3 of his CPRA request. Even if that production was deficient, Abrams has "alternative, less intrusive means of obtaining the information sought" and does not need to have the names of the Presenters to know how any public money was spent. *See* City of San Jose, *supra,* 74 Cal.App.4th at 1020. Reg. Opp. at 14.

With respect to the public interest in responding to free speech with more free speech, Abrams does not need to the have the Presenters' names to allow opponents to engage in free speech opposing their viewpoints.

In sum, there is only a weak public interest in disclosure of the names of the Presenters, who presented at a student-led Conference which the UCLA administration disavowed and only permitted in the interests of free speech. *See* Kang Decl., ¶¶ 5-8.

c. Balancing of Public Interests

Regents and Intervenors have shown that disclosure of the Presenters' names would run the risk of criticism and harassment. This risk comes with the territory for persons who place themselves in the public eye like Mullen and Marzec, but there is no evidence that the Presenters wish to air their opinions publicly. There is a public interest in protecting the identity of persons who wish to air their free speech rights in a closed setting of like-minded persons without being identified.

Regents also have shown that disclosure would harm the public interest underlying UCLA's efforts to promote free speech. The University of California asserts that it has long been committed to protecting the First Amendment rights of its students, faculty and staff, and to encouraging free and open debate. Kang Decl. ¶¶ 5-8. UCLA also asserts that it is committed to doing everything possible to ensure that issues are debated on the merits, with clarifications, concessions, persuasion, and respect, so that a diversity of viewpoints may be aired, debated, and considered. Id., ¶¶ 5-6. Abrams provides no evidence that this is not true, and there is a public interest in ensuring open debate.

Balanced against the public interest in non-disclosure is the relatively weak interest in disclosure of the names of Presenters from a student-led Conference which the UCLA administration disavowed and only permitted in the interests of free speech. *See* Kang Decl., ¶¶ 5-8. Regents have met their burden to show clearly that the public interest in non-disclosure clearly outweighs the public interest in disclosure of the Presenters' names pursuant to section 6255(a).

3. Section 6254(c)

Intervenors argue that non-disclosure of the Presenters' names is warranted under section 6254(c). Int. Opp. at 13.

Disclosure of records under the CPRA is not required if they are personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy. §6254(c). The term "unwarranted" means that the court must balance against the individual's privacy interest the public interest in disclosure.

Intervenors assert that the records of their names qualify as "similar files" and disclosure would constitute an unwarranted invasion of personal privacy. Int. Opp. at 13. California courts look to federal Freedom of Information Act ("FOIA") exemption 6, which is substantially identical to section 6254(c) when evaluating claims of privacy under the CPRA. Versaci v. Superior Court, ("Versaci") (2005) 127 Cal.App.4th 805, 818.

The term "similar files" has a broad meaning and FOIA exemption 6 includes the names of individuals. Judicial Watch, Inc. v. Dept. of the Navy, ("Judicial Watch") (D.D.C. 2014) 25 F.Supp.3d 131, 141 (signatures on business memorandum qualified under exemption 6). Intv. Opp. at 13.

The purpose of Congress in drafting exemption 6 was to detailed government records on a person that can be identified as applying to that individual. Versaci, *supra,* 127 Cal.App.4th at 819 (citation omitted). To qualify for protection under FOIA exemption 6, the document need not contain intimate details or highly personal information about the person, but it must at minimum have non-intimate information about a particular individual. Id. (employee performance evaluations protected by section 6254(c)). FOIA exemption 6 encompasses "bits of personal information" that refer to a particular individual. Judicial Watch, *supra,* 25 F.Supp.3d at 141. This includes a list of signatories on a document. Id. By parallel reasoning to FOIA, a person's name on a list qualifies under section 6254(c).

The question becomes whether the Presenters have a substantial privacy interest, the disclosure of which would constitute an unwarranted invasion of privacy. The right to privacy is an inalienable right under the California Constitution. Cal. Const., art. I, §1. This right is violated where there is (1) a legally protected privacy interest; (2) a reasonable expectation of privacy; and (3) conduct constituting a serious invasion of privacy. Hill v. National Collegiate Athletic Assoc., ("Hill") (1994) 7 Cal.4th 1, 35-37. An otherwise prohibited invasion of privacy may be legally justified if it substantively furthers a legitimate competing interest, unless the claimant can point to "feasible and effective alternatives" with "a lesser impact on privacy interests." Id. at 40.

As Intervenors argue, they have legally protected privacy interests in their "informational privacy", which is the principal focus of the right to privacy. Sheehan v. San Francisco 49ers, Ltd., (2009) 45 Cal.4th 992, 999-1000. Informational privacy "prevents government and business interests from . . . misusing information gathered for one purpose in order to serve other purposes or to embarrass us." Hill, *supra,* 7 Cal.4th at 36 (internal quotes omitted). SJP disclosed Intervenors' names to UCLA for the limited purpose of allowing the university to conduct background checks so the Conference could proceed. If UCLA were to disclose Intervenors' names, it would be a misuse of the information. *See* Hernandez v. Hillsides, Inc., (2009) 47 Cal. 4th 272, 295, 297 (the motivations of the party intruding on another's privacy interests are relevant to privacy considerations under the California Constitution). Int. Opp. at 12.

Intervenors have a reasonable expectation of privacy based on both widely accepted community norms and the assurance given by UCLA that their names would be kept confidential. Hill, *supra,* 7 Cal.App.4th at 37; County of Los Angeles v. Los Angeles County Employee Relations Com., (2013) 56 Cal.4th 905, 927-28. Int. Opp. at 12.

Finally, Abrams does not have a competing interest in the disclosure of Intervenors' names that cannot be met by effective alternatives, including Regents' redacted disclosure of the security screening process and its results and Abrams' ability to request financial records. Int. Opp. at 12-13.

Intervenors have a substantial privacy interest because the disclosure of their names could likely lead to embarrassment or harassment. Forest Serv. Employees for Envtl. Ethics v. U.S. Forest Serv., (9th Cir. 2008) 524 F.3d 1021, 1026; Judicial Watch, *supra,* 25 F. Supp 3d at 141.

Disclosure of identifying information is often outweighed by individual privacy interests. City of San Jose, *supra*, 74 Cal.App.4th at 1025 (residents who complained to the city about airport noise); Coronado Police Officers Assn. v. Carroll, (2003) 106 Cal.App.4th 1001, 1013-14 (public defenders' office witness database). The court evaluated the public interest in disclosure of the Presenters' names pursuant to section 6255(a) *ante* and now concludes that public interest does not overcome Intervenors' privacy interest under section 6254(c).

4. Section 6254(k)

Section 6254(k) provides in relevant part: "[N]othing in this chapter shall be construed to require disclosure of records that are any of the following:...(k) [r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law...." Section 6254(k) "is not an independent exemption. It merely incorporates other prohibitions established by law. CBS, *supra*, 42 Cal.3d at 656; Copley, *supra,* 39 Cal.4th at 1283.

Regents and Intervenors assert that the Presenters' names are exempt from disclosure under section 6254(k) because disclosure would violate Intervenors' rights under both the federal and state constitutions to association and anonymous speech.

a. Freedom of Association

Regents and Intervenors contend that disclosure of Intervenors' names would violate their right to freedom of association under the due process clause of the Fourteenth Amendment, relying on NAACP v. Alabama, (1958) ("NAACP") 357 U.S. 449, 460-62 and Bates v. City of Little Rock, ("Bates") (1960) 361 U.S. 516, 523-24. Regents Opp. at 9-10; Int. Opp. at 8-9.

In NAACP and Bates, state governments sought disclosure of membership lists of rank-and-file members of the NAACP. NAACP, *supra*, 357 U.S. at 451; Bates, *supra*, 361 U.S. at 519. NAACP refused to provide the list, arguing that publicizing its members would invite repression and economic reprisals against them and dissuade present members and potential recruits from associating with the organization, violating their constitutional rights of association and assembly. Id. The Supreme Court found that NAACP had shown that disclosure of their members' identities would subject them to harassment, threats of bodily harm, economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility, and would discourage new members from joining the organization and induce former members to withdraw. NAACP, *supra*, 357 U.S. at 462-63; Bates, *supra*, 361 U.S. at 523-24. Because the "compelled disclosure of affiliation with groups engaged in advocacy" may impinge on the right of free association, "privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." NAACP, *supra,* 357 U.S. at 462.

Under NAACP and its progeny, where there is a "reasonable probability" that the revelation of the identity of members of a group will expose those members to "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility," compelled disclosure of the members' names is inappropriate. NAACP, *supra*, 357 U.S. at 462; Americans for Prosperity Found. v. Becerra, (2018) 903 F.3d 1000, 1012.

Regents and Intervenors assert that it is undisputed that the Presenters have a right of association and NAACP applies because disclosure will result in the Presenters facing harassment, reprisals, and/or threats as a result of their association with SJP. Regents Opp. at 10-11; Intv. Opp. at 9-10.

Abrams distinguishes NAACP as a case where the Supreme Court held only that the NAACP was not required to disclose its membership roster and still had to turn over the names of its directors and officers. He concludes that UCLA should similarly be required to disclose the names of the Presenters. NAACP was also a private organization and there is no presumption that its records should be open for public inspection, whereas UCLA is a public organization for which there is a constitutional presumption in favor of record access. Unlike the NAACP members, there is no serious concern that the Presenters will suffer illegitimate reprisals solely as a result of their SJP membership. Reply at 7.

The court does not find Abrams' distinctions to be material. The Presenters do not represent the leadership of the SJP and are not subject to public disclosure in the same manner as NAACP's leadership. While UCLA is a public organization, SJP is not. The presumption in favor of access may be overcome and the potential harassment faced by the Presenters is real. While Abrams is correct that there is inadequate evidence that the Presenters would face any criminal reprisals, the harm faced by disclosure need not be criminal in nature to justify nondisclosure. Neither NAACP nor Bates include such a requirement.

b. Right to Anonymous Speech

Intervenors assert that anonymous speech, such as that made by the Presenters at the Conference, falls squarely within the protections of the Free Speech Clause of the First Amendment. Int. Opp. at 11. "[U]nder our Constitution, anonymous [speech] is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and dissent . . . [a]nonymity is a shield from the tyranny of the majority." McIntyre v. Ohio Elections Comm'n, (1995) 514 U.S. 334, 346-47. The Supreme Court has recognized that "persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all." Talley v. California, (1960) 362 U.S. 60, 64. The right to anonymous speech extends to advocacy conducted in person, even when an individual's physical identity is revealed. Watchtower Bible & Tract Soc'y of New York, Inc. v. Vill. of Stratton, (2002) 536 U.S. 150, 167. Int. Opp. at 11.

Abrams argues that Regents and Intervenors fail to cite any authority demonstrating that a right to anonymous speech at a publicly funded Conference at a public university. Reply at 6. Abrams would be correct if the facts were as stated – that is, if the Conference was sponsored by UCLA. It was not. It was a student organized and led conference with minimal, if any, involvement by UCLA. That makes all the difference in the right to anonymous speech.

c. Right to Privacy

Intervenors argue that disclosure of the Presenters' names would violate their inalienable right to privacy under the California Constitution. Intv. Opp. at 12. The court addressed Intervenors' right to privacy *ante*. The same analysis applies to privacy under section 6254(k).

d. Conclusion

The Presenters' names are exempt from disclosure under section 6254(k) because disclosure would violate their rights to freedom of association, anonymous speech, and privacy. To the extent that balancing is required, the Presenters' constitutional rights are not overcome by a balancing of the public interest in disclosure.

F. Conclusion

The Petition is denied. Regents' counsel is ordered to prepare a proposed judgment, serve it by email and regular mail on Abrams and Intervenors' counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for April 27, 2021 at 1:30 p.m.

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[1] Abrams is an attorney licensed to practice in New York, but not in California. Pet. ¶3.

[2] All further statutory references are to the Govt. Code unless otherwise stated.

[3] Section 6254(f) does not involve a public interest balancing test, and the courts have consistently refused to apply additional criteria to CPRA exemptions that are not explicitly provided in the statute. *See* Williams, *supra*, (1993) 5 Cal.4th 337, 354 ("The Legislature has carefully limited the exemption for law enforcement investigatory records … It is not our task to rewrite the statute.").

[4] The court has ruled on Regents' and Intervenors' written objections to Abrams' evidence by placing "O" for "overruled" and "S" for "sustained next to the objection. The clerk is directed to scan and file the court's rulings.

[5] Regents request judicial notice of: (1) USAID, Certification Regarding Terrorist Financing Implementing Executive Order 13224, dated June 7, 2018 (Ex. D); (2) the fact that NSJP describes itself on its website as: "an independent grassroots organization composed of students and recent graduates that provides support to about 200 SJP chapters on university and college campuses, as well as taking part in the broader national and global solidarity movements for Palestinian freedom, justice, and equality. As students, education, awareness, and critical analysis are our priorities."; and (3) the fact that a search of the Canary Mission website shows that it compiles dossiers on thousands of Palestinian rights advocates available for public viewing.

Exhibit D is an official act and is judicially noticed. Evid. Code §452(c). The requested facts are not subject to judicial notice and the request is denied.

[6] Although Abrams asked for the identities of 65 Presenters, there were only 64.

[7] One member of the UCLA faculty claims to have been targeted with threats and harassing behavior for speaking on issues similar to those of the Conference presenters. Makdisi Decl., ¶¶ 4-11. He cites as an example a document in which the author requests Muslims to stop "stop hating" and ends: "If you keep it up, you're gonna REALLY see some 'brutality that boomerangs'! You haven't seen SHIT yet." Makdisi Decl., ¶6.

[8] Intervenors request judicial notice of the following exhibits in Intervenors' Exhibit Index: (1) the Complaint filed by the Zionist Advocacy Center ("TZAC") in U.S. District Court for the District of Columbia, Case No. 1:15-cv-2001-RC in the (Ex. 17); (2) the order of dismissal with prejudice in Case No. 1:15-cv-2001-RC (Ex. 17); (3) the Complaint filed by TZAC in the U.S. District Court for the Southern District of New York Case No. 1:18-cv-01500-VEC (Ex. 18); (4) TZAC's notice of voluntary dismissal in Case No. 1:18-cv-01500-VEC (Ex. 19; (5) Decision and Order of Dismissal in International Legal Forum v. The American Studied Association, Index No. 651938/2018 (Ex. 20); (6) Docket Sheet in the case of TZAC, Inc. v. New Israel Fund, U.S. District Court for the Southern District of New York Case No. 1:20-cv02955-GHW (Ex. 21); (7) TZAC's Amended Complaint in Case No. 1:20-cv02955-GHW (Ex. 22); and (8) State of New York's Statement of Interest in TZAC, Inc. v. New Israel Fund, Case No. 1:20-cv-02955-GHW (Ex. 23).

The existence of the requested documents, but not the truth of their contents, is judicially noticed. Evid. Code §452(d); Sosinsky v. Grant, (1992) 6 Cal.App.4th 1548, 1551 (judicial notice of findings in court documents may not be judicially noticed).

Intervenors have filed a series of Doe declarations under seal. Exs. 2-8. While the court permitted this, Intervenors misunderstand the scope of the court's order. The court authorized declarations filed under seal that would identify the Intervenors and express their concern about revealing their identities. The court did not authorize substantive evidence to be presented under seal. To do so would permit evidence to which Abrams would have no way of responding. Consequently, the court has not considered the substantive portions of the sealed declarations.

[9] Exhibit B to the Greendorfer declaration is an email, but it does not support the DeLuca statement.

[10] The other portions of Abrams' CPRA request are not at issue. *See* Reg. Opp. at 5.

[11] Abrams argues that section 6254(f) would require the disclosure of the names and addresses of persons involved anyway. Reply at 5-6. Not so. Section 6254(f) only requires such disclosure to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident. Abrams does not qualify for any of persons to whom disclosure is required.

[12] Abrams refers to the declarations as "affidavits", but they are not affidavits. An affidavit is made under oath and a declaration is made under penalty of perjury. *See* CCP §§ 2003, 2015.5.

[13] Regents also assert that there is a public interest in non-disclosure because disclosure would damage UCLA's efforts to promote free speech. Regents Opp. at 15. UCLA is committed to protecting the First Amendment rights of its students, faculty and staff, and to encouraging free and open debate. Id. A disclosure of the Presenters' names is likely to adversely impact UCLA's ability to advance its mission, which includes the sharing of even unpopular or controversial ideas, and the public will suffer as a result. Kang Decl., ¶8. Abrams dispute that UCLA's interest in protecting free speech would be damaged by disclosure, asserting that UCLA suppressed open debate by allowing the Conference to take place "under a cloak of secrecy." Pet. Op. Br. at 7.

Regents' argument is based on speculation and not evidence. There is no substantial evidence that disclosure of the Presenters' names would negatively impact UCLA's ability to encourage open debate or share unpopular or controversial ideas.

[14] UCLA's representative testified that the school's SOLE Advisor was required to certify the accuracy of Exhibit A-1 and that the document was kept by the University in the ordinary course of business. Abrams Decl., Ex. A, pp. 31-32, 41-42.

[15] Abrams cites a non-binding case from New York, Awad v. Fordham University, No. 2020-0843 (N.Y. App. Div., Dec. 22, 2020), in support of his claim that SJP –Abrams probably means NSJP -- has a reputation for being notorious and subversive on college campuses. Pet. Op. Br. at 3. Abrams has not included a copy of this decision and does not explain whether the court's statement of notorious and subversive was a finding of fact or a conclusion of law. The court cannot consider the truth of fact findings in a court document. *See* Sosinsky v. Grant, (1992) 6 Cal.App.4th 1548, 1551.